TAN AH BAH & ORS.

v.

PUBLIC PROSECUTOR

HIGH COURT MALAYA, PENANG
GUNN CHIT TUAN J
[CRIMINAL REVISION NO. 19/82]
22 AUGUST 1983

CRIMINAL LAW AND PROCEDURE: *Gaming - Accused persons convicted under s. 7(2) Common Gaming Houses Ordinance No. 6/53 - Police party acting on information conducted raid - Game of "blangkas" was played - Participants ran out on seeing police - Police apprehended 33 persons - Police recovered total sum of RM8,850 cash from 33 persons after examination - Magistrate ordered forfeiture of the RM8,850 upon conviction - Whether any evidence that the RM8,850 was used in or for the purpose of playing "blangkas".*

This was a revision against the order of forfeiture of the sum of RM8,850 by the learned Magistrate under the Common Gaming Houses Ordinance No. 6/53.

Held:

[1] The evidence that the said sum of RM8,850 was found in the possession i.e. in the pockets of the 33 persons did not establish that that sum of money was used for the commission of the offence of gaming under s. 7(2) of the said Ordinance.

[2] The learned Magistrate had no power to make an order for the forfeiture of the said sum of RM8,850 under s. 16(2) of the said Ordinance as that section is restricted to the confiscation of gaming instruments, appliances, money, etc. found in a common gaming house "or on any persons found therein or escaping therefrom and which the Magistrate is of opinion were used or intended to be used for any game or lottery..."

[3] In this case, there is no evidence to show that the said sum of RM8,850 had been used in or for the purpose of playing the game of "blangkas" and could not therefore be declared by the Court before which the conviction was had to be forfeited to the Government.

[Order of forfeiture of the sum of RM8,850 set aside. Order that money be refunded.]

Cases referred to:
Teoh Ah Pow v. Public Prosecutor [1961] 27 MLJ 81
Hoo Kung Hock v. Public Prosecutor [1941] MLJ Rep 23

Legislation referred to:
Common Gaming Houses Ordinance 1953, ss. 7(2), 16(1), (2)

For the applicants (22 of them in person) - No Counsel engaged by them
For the public prosecutor - Nordim bin Haji Sulaiman, DPP

JUDGMENT

Gunn Chit Tuan J:

On 18 February 1982 at about 7.00 p.m. ASP Lamack together with a police party, acting on information received, conducted a raid in an open space behind house No. 89, Jawi Village, Sungei Bakap. As the police party approached a shed they noticed about sixty persons, both male and female, playing a game of chance called "blangkas". The police party rushed towards

the shed and all the persons therein started running out of it. Whilst fleeing from the police they were seen collecting money on a table. The police party was successful in apprehending 33 persons, both male and female, who later were charged in the Magistrate's Court at Sg. Jawi. A sum of RM187 found on the table was also seized together with various appliances used for playing blangkas.

In addition to the various exhibits recovered by the police party, they also recovered a total sum of RM8,850 cash found after examination of the 33 persons concerned. Each one of them was given a search list. All the 33 persons pleaded guilty and having been convicted under s. 7(2) of the Common Gaming Houses Ordinance No. 6/53 were each fined a sum of RM200 in default 20 days' jail. The said sum of RM8,850 was also ordered to be forfeited by the learned Magistrate after the prosecuting officer had drawn his attention to s. 16(2) of the said Ordinance. One of the 33 persons arrested was Tan Ah Bah who wrote a letter addressed to the Judge, High Court, Penang dated 14 May 1982, appealing for the return of the cash which was taken from him and the others.

Having perused the records of this case I called Tan Ah Bah and the others as well as the learned Deputy Public Prosecutor to appear and address the Court before I decided whether to exercise my powers of revision. Encik Nordin bin Haji Sulaiman, who appeared for the Public Prosecutor, submitted that the learned Magistrate who heard this case did not enquire whether the said sum of RM8,850 was found on the persons concerned and suggested that I might consider directing an inquiry to be held for that purpose. However, I pointed out to the learned Deputy that it was not necessary to do so as the evidence recorded by the learned Magistrate clearly showed that the said sum of RM8,850 was found after a search was made on the 33 persons concerned. The evidence that the said sum of RM8,850 found in the possession, i.e. in the pockets, of those 33 persons did not establish that that sum of money was used for the commission of the offence of gaming under s. 7(2) of the said Ordinance. It was also clear that the learned Magistrate had no power to make an order for the forfeiture of the said sum of RM8,850 under s. 16(2) of the said Ordinance as that section is restricted to the confiscation of gaming instruments, appliances, money, etc. found in a common gaming house "or on any persons found therein or escaping therefrom and which the Magistrate is of opinion were used or intended to be used for any game of lottery..." As pointed by Rigby J (as he then was) in *Teoh Ah Pow v. Public Prosecutor* [1961] 27 MLJ 81, 82 it is "only in relation to common gaming houses and where a search warrant has been issued in accordance with the provisions of s. 16(1) of the Ordinance that the Magistrate is entitled to exercise his powers of forfeiture". Moreover the evidence in this case shows that the said sum of RM8,850 was found on those 33 persons but there is no evidence to show that the sum of money had been used in or for the purpose of playing the game of "blangkas" and could not therefore be declared by the Court before which the conviction is had to be forfeited to the Government. (see *Teoh Ah Pow v. PP* (*supra*) and *Hoo Kung Hock v. Public Prosecutor* [1941] MLJ Rep 23).

For these reasons, the order of forfeiture of the said sum of RM8,850 must be set aside and I also ordered that the money be refunded to the persons from whom it was taken by the police.

Also found at [1987] 2 CLJ 469